

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2460

SPONSOR: Senator Haridopolos

SUBJECT: Relating to Trespass

DATE: March 18, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Lang	JU	Fav/1 amendment
2.			CJ	
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill removes the posting requirement in cases of trespass on stationary rails or roadbeds, and provides an alternate method to posting.

Under this bill, a law enforcement officer is authorized to effect a warrantless arrest for certain trespasses on stationary rails or roadbeds. Law enforcement officers are granted immunity from liability for certain arrests on railroad or railway premises.

This bill substantially amends s. 810.011, F.S., and s. 901.15, F.S., and reenacts s. 810.09(1)(a), F.S.

II. Present Situation:

Statutory Authority

Chapter 810 of the Florida Statutes governs the crimes of burglary and trespass.

Current law provides that a trespass on property exists where an unauthorized, unlicensed, or uninvited person willfully enters upon a property other than a structure or conveyance for which notice is given by actual communication or by posting.¹ Such unauthorized entry by a person into or upon any enclosed or posted land is considered to be prima facie evidence of intent to commit trespass.²

Posted land is defined as land that has signs placed upon it no more than 500 feet apart and at each corner of the boundaries of the land that are prominent, with letters at least 2 inches in

¹ s. 810.09(1)(a), F.S.

² s. 810.12(1), F.S.

height and the words “no trespassing”, along with identification of the owner, lessee, or occupant of the land.³

Any person who willfully removes, destroys or mutilates a posted notice is guilty of a second degree misdemeanor.⁴

A landowner of enclosed land that does not exceed five acres with a dwelling house located on it is exempt from the notice posting requirement.⁵

An officer is generally required to secure a warrant prior to making an arrest, unless the person to be arrested has committed a felony, or a misdemeanor in the officer’s presence. Specific enumerated crimes do not require arrest warrants, such as certain driving crimes, domestic violence, child abuse, and certain crimes of battery.⁶ Also, an arrest for a trespass taking place in a secure area of the airport does not require a warrant, and the law enforcement officer making the arrest is granted civil immunity, provided that the officer has acted in good faith, through the exercise of due care.⁷

Case Law on Warrantless Arrests

The Second District Court of Appeal ruled that although an officer can conduct an investigatory stop where he or she has reasonable suspicion that a crime has been committed, a warrantless arrest for a misdemeanor or an ordinance violation cannot be made unless it is conducted in his or her presence.⁸ A warrantless arrest for a misdemeanor trespass on property other than a structure or conveyance is illegal, thereby warranting exclusion of evidence obtained incident to that arrest, unless every element of the crime is committed in the officer’s presence.⁹ A warrantless arrest for a misdemeanor can be made, however, where the officer has probable cause that a crime has been committed, including in the case of a trespass.¹⁰

III. Effect of Proposed Changes:

This bill removes the posting requirement that currently establishes a trespass, for any stationary rails or roadbeds that are owned or leased by a railroad or railway company. The notice requirement can otherwise be met by showing that:

- The rails or roadbeds are readily recognizable to a reasonable person as belonging to a railroad or railway company; or,
- The rails or roadbeds are identified by conspicuous fencing or signs showing that the property is owned or leased by a railroad or a railway company.

³ s. 810.011(5)(a), F.S.

⁴ s. 810.10, F.S.

⁵ s. 810.011(5)(b), F.S.

⁶ s. 901.15 (1) through (10), F.S.

⁷ s. 901.15 (15), F.S.

⁸ See *Goss v. State*, 744 So.2d 1167, 1168 (Fla. 2d DCA 1999).

⁹ See *Smith v. State*, 778 So.2d 329, 330 (Fla. 2d DCA 2000).

¹⁰ See *State v. Cremer*, 563 So.2d 817, 819 (Fla. 5th DCA 1990).

A warrant by an officer is not required where there is probable cause to believe that the person has committed trespass to stationary rails or roadbeds owned or leased by a railroad or railway company, and the company has at least met the requirements under this bill for a waiver of the posting requirement. An officer who acts in good faith, and exercises due care is immune from liability under this bill.

Section 810.09, F.S., is reenacted to incorporate the amendments provided under this bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may reduce liability for a railroad company, in cases where an uninvited trespasser brings suit for injury.

C. Government Sector Impact:

This bill may have a slight judicial workload impact.

VI. Technical Deficiencies:

Under the rules of statutory construction, a section of law that cross-references another section or portion thereof that is subsequently amended does not incorporate those amendments unless the section containing the cross-reference is reenacted (republished). Otherwise, the statutory cross-reference is linked to the version of the section that existed prior to the amendment.

Section 901.15, F.S., as revised in this bill, is cross-referenced in s. 501.073, F.S. which relates to Agricultural Law Enforcement and their arrest powers without warrants. This section may need to be republished in order to incorporate the amendments to s. 901.15, F.S.

VII. Related Issues:

None.

VIII. Amendments:

#1, Judiciary:

Removes authority for law enforcement to make warrantless arrests for trespass on stationary rails/roadbeds, and also removes related provision entitling law enforcement to immunity from civil liability in such cases involving warrantless arrests.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
